NOT FOR PUBLICATION IN WEST'S BANKRUPTCY REPORTER:

In re Lanford, Case No. 01-2548.

Decided September 1, 2004.

Order Reopening Case on Debtor's Motion . . .

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re	)	
	)	
HARRIET LANFORD,	)	Case No. 01-02548
	)	(Chapter 7)
Debtor.	)	

ORDER REOPENING CASE ON DEBTOR'S MOTION, SETTING HEARING ON REQUEST FOR CONTEMPT SANCTIONS (INCLUDING SETTING PRETRIAL REQUIREMENTS IN ADVANCE OF HEARING), DENYING CREDITOR'S CROSS-REQUEST TO REOPEN, AND DIRECTING REFUND OF REOPENING MOTION FEE PAID

Under consideration is the debtor's motion to reopen her case for the limited purpose of pursuing contempt sanctions against Eleanor Mae Moffatt, Jr. for violating the discharge injunction. On its face, the motion makes out a case for holding Moffatt in contempt, and thus justifies reopening the case. The opposition filed by Moffatt does not convince the court to the contrary.

I

The debtor alleges in error that Moffatt's violation of the discharge violated the automatic stay, thus entitling the debtor to damages under 11 U.S.C. § 362(h). The automatic stay no longer was in effect to bar pursuit of the claim against her once the discharge was entered. 11 U.S.C. § 362(c)(2)(C). Nevertheless, damages are recoverable for violation of the discharge injunction pursuant to civil contempt sanctions, as in the case of the violation of any other injunction.

II

Moffatt does not defend on the basis that she holds a nondischargeable debt unaffected by the debtor's discharge. Even if she did, that would be an issue to decide in adjudicating whether a violation of the discharge injunction occurred.

III

As to the violation of the discharge injunction, Moffatt's opposition cites Karrick v. Wetmore, 25 App. D.C. 415 (D.C. Cir. 1905), following Dimock v. Revere Copper Co., 117 U.S. 559 (1886), which held that a debtor must affirmatively raise the discharge as a defense, such that a judgment recovered by a creditor after entry of the discharge may not be attacked collaterally as relating to a discharged debt. That holding is not good law under the Bankruptcy Code.

Both Karrick and Dimock were decided prior to critical amendments made to the Bankruptcy Act in 1970, adding Bankruptcy Act § 14f which changed the discharge from an affirmative defense (which could be waived) to a statutory injunction. As noted in 4 Collier on Bankruptcy ¶ 524.LH[1] at p. 524-54 (15th ed. as revised March 2003), "[a] primary reason for the amendments was to effectuate the discharge and make it unnecessary to assert it as an affirmative defense in a subsequent state court action." Bankruptcy Act § 14f, in essential part, was carried forward in the Bankruptcy Code, specifically, in 11 U.S.C. § 524(a):

> Accordingly, if a creditor brings a collection suit after discharge, and obtains a judgment against the debtor, the judgment is rendered null and void by section 524(a). The purpose of the provision is to make it absolutely unnecessary for the debtor to do anything at all in the collection action. Before the enactment of Section 14f, a debtor could not safely ignore a postdischarge collection action; the discharge had to be pled as an affirmative defense.

Id. at p. 524-58.

Section 524(a)(2) provides that the discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any [discharged] debt as a personal liability of the debtor . . . ." Section 524(a)(1), in recognition that sometimes the injunction will be disregarded, "voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged . . . ."[1] This is plain and unambiguous language rendering Moffatt's judgment a nullity as to any discharged debt.

Moreover, even disregarding the express language of § 524(a)(1) voiding postdischarge judgments, Karrick and Dimock are no longer good law by reason of the injunctive aspect of §

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[1] Section 524(a)(1) is the re-embodiment of Bankruptcy Act § 14f(1) which provided that an order of discharge shall "declare that any judgment theretofore or **thereafter** obtained in any other court is null and void as a determination of the personal liability of the bankrupt with respect to any [discharged debt]." [Emphasis added.]

524(a)(2). Kalb v. Feuerstein, 308 U.S. 433 (1940), clearly permits collateral attack of state court orders that are void based on violating a federal statute barring the state court from proceeding. See In re Benalcazar, 283 B.R. 514, 521-29 (Bankr. N.D. Ill. 2002) (decided in the context of 11 U.S.C. § 362(a), which, unlike § 524(a), includes no specific language voiding judgments obtained in violation of § 362(a)).

IV

Although Moffatt has not invoked the Rooker-Feldman doctrine, the court will address it as it goes to the court's subject matter jurisdiction. The Rooker-Feldman doctrine generally deprives this court of subject matter jurisdiction to adjudicate a claim when the claim is "inextricably intertwined" with a state court judgment.[2] Here, the debtor's challenge to the state court judgment appears to be "inextricably intertwined" with that judgment simply because upholding that challenge would

[2] The Rooker-Feldman doctrine is named after two Supreme Court decisions, Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). In Rooker, the Supreme Court held that federal jurisdiction over direct appeals from state courts would lie exclusively in the Supreme Court. In Feldman, the Supreme Court expanded the doctrine to bar federal jurisdiction over particular claims that are "inextricably intertwined" with those a state court has already decided. The resulting Rooker-Feldman doctrine provides that lower federal courts lack subject matter jurisdiction over a case if the exercise of jurisdiction over that case would reverse or modify a state court judgment. See Hachamovitch v. DeBuono, 159 F.3d 687, 693 (2d Cir. 1998).

render the state court judgment invalid.[3]

However, Rooker-Feldman simply does not apply in the face of a federal statute, § 524(a)(1), which declares that a debtor's discharge voids any subsequent state court judgment determining the personal liability of the debtor with respect to a discharged debt. Because the state court judgment here has been voided by § 524(a)(1), the judgment is unworthy of protection under Rooker-Feldman.

This is made clear by Kalb, 308 U.S. at 438-39:

> It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally.

[Footnotes omitted.] In Kalb, the Court concluded that the Bankruptcy Act operated to oust the state court of jurisdiction or power to proceed with a foreclosure proceeding and a subsequent eviction proceeding, such that the state court's judgments (and all actions taken in reliance thereon) “were all

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[3] Without exploring the issue at depth, it suffices to note that one court of appeals holds that a claim is “inextricably intertwined” under Rooker-Feldman when the claim "succeeds only to the extent that the state court wrongly decided the issues before it [or] if the relief requested . . . would effectively reverse the state court decision or void its ruling." Charchenko v. City of Stillwater, 47 F.3d 981, 983 (8th Cir. 1995) (citations omitted).

without authority of law." Kalb, 308 U.S. at 443. Accordingly, the action of the state court "was not merely erroneous but was beyond its power, void, and subject to collateral attack." Kalb, 308 U.S. at 438. The Rooker-Feldman doctrine is premised on review of state court judgments by the federal courts generally being limited to review by the Supreme Court, but it presupposes a judgment that is not subject to collateral attack. Under Kalb, the doctrine does not apply when the judgment is void under § 524(a)(1). See Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081-82 (9th Cir. 2000) (*en banc*) (judgment entered based on erroneous determination that automatic stay did not apply was subject to collateral attack); Benalcazar, 283 B.R. at 526-529 (same); In re Cruz, 254 B.R. 801, 812 (Bankr. S.D.N.Y. 2000) ("[S]ince § 524(a)(1) voids the Default Judgment . . ., the Court does not need to further examine the applicability of the Rooker-Feldman doctrine or any other preclusionary doctrine.").

Moffatt does not contend that her claim is of a nondischargeable character, and the debtor asserts that she was unaware that the state court case was proceeding after entry of the discharge. Accordingly, this case, at least on the present papers, does not present the issue of whether the Rooker-Feldman doctrine applies when the issue of dischargeability has been

actually litigated.[4]

V

The debtor did not make proper service on Moffatt, as mailing of the motion to Moffatt's attorney did not constitute valid service under F.R. Bankr. P. 7004(b)(1). That defect has been waived because Moffatt has now responded to the motion. Furthermore, she has responded to the motion as including a request for sanctions (instead of viewing the ambiguous motion as being limited to a request to reopen with pursuit of sanctions via some motion to be forthcoming upon reopening). Accordingly, the request for sanctions included within the motion's proposed order is ready to set for a hearing.

The court will direct a refund of the reopening fee. The reopening sought was for taking an action related to the debtor's discharge. Under 28 U.S.C. § 1930, Appendix, item (11), the fee for filing a motion to reopen is not to be collected if the

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[4] Some decisions suggest that the doctrine would be inapplicable, even if the issue had been actually litigated and decided in Moffatt's favor, because the Court observed in Kalb, 308 U.S. at 444 (footnotes omitted), that "considerations as to whether the issue of jurisdiction was actually contested in the [state court], or whether it could have been contested, are not applicable" where the state court has been deprived of jurisdiction and power to act. See Gruntz, 202 F.3d at 1081-84; Benalcazar, 283 B.R. at 527-29. But see Ferren v. Searcy Winnelson Co. (In re Ferren), 203 F.3d 559 (8th Cir. 2000) (per curiam) (Rooker-Feldman doctrine bars relitigation of issue of scope of automatic stay found by state court to be inapplicable); Siskin v. Complete Aircraft Services, Inc. (In re Siskin), 258 B.R. 554, 562 (Bankr. E.D.N.Y. 2001) (same); In re Singleton, 230 B.R. 533, 536 (6th Cir. BAP 1999) (same).

reopening is “for actions related to the debtor's discharge,” and the $155 fee ought not have been collected.

Moffatt asks in her opposition that the case be reopened for the purpose of investigating undisclosed assets and false statements on the debtor's bankruptcy schedules, stating that:

> [T]he case should be reopened to allow for a review and amendment of the discharge order. The discharge order should be amended to exclude a discharge of an acknowledged tort debt [(Moffatt's claim)] which was falsely identified as “credit card purchases” and where the Debtor fraudulently concealed assets and manipulated notice to creditors to obtain the discharge order.

Moffatt's request should be pursued by a motion, see F.R. Bankr. P. 9013, as the debtor may very well be able to defeat a motion by Moffatt to reopen for the stated purpose of amending the discharge. A court may, indeed, revoke a discharge obtained through the fraud of the debtor if the creditor requesting revocation did not know of the fraud until after the granting of the discharge. 11 U.S.C. § 727(d)(1). However, the creditor must request such a revocation within one year after the discharge is granted. 11 U.S.C. § 727(e)(1). Here, the debtor received her discharge on April 9, 2002, more than two years ago.[5]

[5] Of course, Moffatt is free to file a motion to reopen for the purpose of appointment of a trustee to pursue undisclosed assets (or to conduct inquiries to attempt to discover such assets), but such a motion would require a reopening fee or a request for a waiver of the fee (for example, a waiver pending discovery of additional assets for a trustee to administer).

VI

In accordance with the foregoing, it is

ORDERED that:

1. This case is reopened to permit pursuit of the civil contempt motion (embodied in the motion to reopen) with respect to postpetition acts taken regarding Moffatt's allegedly discharged claim.

2. The court denies without prejudice Moffatt's cross-request (contained in her opposition) to reopen the case for other purposes.

3. The clerk shall refund the $155.00 fee paid in connection with filing the motion to reopen to whomever made the payment and may contact the debtor's attorney, if necessary, to ascertain the correct payee.

4. A hearing on the motion to hold Moffatt in civil contempt, contained in the motion to reopen, is set for October 5, 2004 at 9:30 a.m.

5. By September 27, 2004, counsel for the debtor shall serve on counsel for Moffatt a statement of attorney's fees and expenses incurred by the debtor by reason of Moffatt's alleged contempt.

6. By October 1, 2004, the parties shall exchange copies of their exhibits, pre-marked with numbers or letters and the Case No., using numbers for the debtor's exhibits, and letters for

Moffatt's.

7. At the commencement of the hearing, each party shall submit to the courtroom deputy an **original** Witness and Exhibit Record using the attached form, and **two copies** of her exhibits and of her Witness and Exhibit Record for use by the court and the court's law clerk.

Dated: September 1, 2004.

S. Martin Teel, Jr.
United States Bankruptcy Judge

Copies to:

Office of the United States Trustee

Harris S. Ammerman, Esq.

David Dickieson, Esq.